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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 433

CITY OF POTTSVILLE, *Appellant*,

v.

UNITED STATES OF AMERICA, ET AL., *Appellees*.

On Appeal from the United States District Court for the Middle District of Pennsylvania

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellant City of Pottsville appeals from the order of the United States District Court for the Middle District of Pennsylvania, entered on July 11, 1967, denying appellant's motion pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, for leave to intervene in proceedings brought to permanently enjoin the enforcement, operation and execution of certain

orders of the Interstate Commerce Commission, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

A copy of the July 11, 1967 order of the three-judge United States District Court for the Middle District of Pennsylvania is attached hereto as Appendix A. The opinion of July 13, 1967 is attached hereto as Appendix B. Notice of Appeal was filed in said court on July 27, 1967.

JURISDICTION

A suit was brought by the Borough of Moosic under Title 28, United States Code, Sections 1336, 1398, 2284 and 2321-25, to annul and set aside the orders of the Interstate Commerce Commission in two proceedings held by that agency. These were (1) *Pennsylvania R. Co.-Merger-New York Central R. Co.,* 327 I.C.C. 475, 328 I.C.C. 304 and 330 I.C.C. 328, and (2) *Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger* (not yet reported), both orders dated June 9, 1967 permitting and directing certain transactions on July 17, 1967.

City of Pottsville moved for leave to intervene on June 27, 1967 pursuant to 28 U.S.C. Section 2323 and Rule 24(a) of the Federal Rules of Civil Procedure. The order of the District Court denying the motion for leave to intervene was entered on July 11, 1967.

This court has jurisdiction to review said order on direct appeal under 28 United States Code Section 1253. Jurisdiction is sustained by *Brotherhood of Railroad Trainmen* v. *B. & O. R. Co.,* 331 U.S. 519, 524-25, 531; *Sutphen Estates* v. *United States,* 342 U.S. 19, 20.

QUESTION PRESENTED

May a municipality not a resident of the judicial district in which an action is brought to set aside orders of the Interstate Commerce Commission, upon objection of the United States and intervenor Interstate Commerce Commission, be denied leave to intervene as a party plaintiff even though such municipality was a party to one of the Interstate Commerce Commission proceedings whose order is attacked in the action by the plaintiff?

STATUTES INVOLVED

The statutes involved in this appeal are Judicial Code, 28 U.S.C. Sections 2323 and 1253, and are reproduced herein in Appendix C. Rule 24(a) of the Federal Rules of Civil Procedure is also included in Appendix C.

STATEMENT

This is an appeal from an order of the United States District Court for the Middle District of Pennsylvania denying the motion of City of Pottsville pursuant to Rule 24(a) of the Federal Rules of Civil Procedure for leave to intervene as a party plaintiff in a proceeding brought by Moosic, Pa. to set aside orders of the Interstate Commerce Commission which (1) approved and permitted the merger of The Pennsylvania Railroad Company and The New York Central Railroad Company and (2) directed Norfolk and Western Railway Company to include in its system Erie-Lackawanna Railroad Company, The Delaware and Hudson Railroad Corporation and Boston and Maine Corporation.

City of Pottsville was a party to the Interstate Commerce Commission proceedings involving the merger

of The Pennsylvania Railroad Company and The New York Central Railroad Company. Its motion was denied on the ground that City of Pottsville is not located in the Middle District of Pennsylvania and that the United States of America and the Interstate Commerce Commission having objecting to parties raising their objection to both I.C.C. proceedings other than in the Southern District of New York.

THE QUESTION PRESENTED IS SUBSTANTIAL

The question presented by this appeal is whether the unqualified right of intervention accorded by 28 U.S.C. Section 2323 and Rule 24(a) of the Federal Rules of Civil Procedure can be defeated by the desire of the United States and Interstate Commerce Commission to force appellant to bring its suit in the Southern District of New York.

This question is important to the administration of the judicial review of orders of the Interstate Commerce Commission. It is also important for the determination of the right of smaller communities to participate in judicial review of Interstate Commerce Commission orders. One effect of the District Court's action is to deny appellant's request for a permanent injunction against the Interstate Commerce Commission orders.

The District Court Erred in Denying Pottsville's Motion for Leave to Intervene

The District Court granted the motion of Milton J. Shapp, a resident of the Eastern District of Pennsylvania, for leave to intervene. The denial of Pottsville's similar motion deprived appellant of the right to challenge orders of the Interstate Commerce Commission

as an intervenor to a suit brought by another community. City of Pottsville should not be required to go to the financial center of the country to attempt intervention in the suit of a railroad, since it has a statutory right under 28 U.S.C. Section 2323 to intervene in the suit instituted by Moosic, Pa., a community located in nearby Lackawanna County.

CONCLUSION

For the foregoing reasons, probable jurisdiction of this appeal should be noted and the case set down for full hearing on the merits.

Respectfully submitted,

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